

REMARKS/ARGUMENTS

This paper is submitted in response to the Office Action mailed November 21, 2008. Claims 1-13, 15-29, and 31-41 are pending in this application. Claims 1, 17, 33, 38, 40 and 41 are in independent form. Claims 1, 3, 7-9, 15, 17, 19, 23-25, 31, 33, and 37-41 are amended. Support for the changes to the claims may be found in the originally filed disclosure, including original claims, and therefore no new matter is added.

In the Office Action, the Examiner rejected claims 1-13, 15-29, and 31-41 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,605,081 to Helmly (hereinafter “Helmly”) in view of U.S. Patent No. 7,136,787 to Schlessinger et al. (hereinafter “Schlessinger”). The grounds for rejection are believed to be overcome in view of the remarks presented below. In view of the following remarks, immediate allowance of claims 1-13, 15-29, and 31-41 is respectfully requested.

Applicant respectfully traverses the 35 U.S.C. § 103(a) rejection of claims 1-13, 15-29, and 31-41 for at least the reason that Helmly singularly or in combination with Schlessinger fails to disclose or suggest each and every claimed element. As argued in the Pre-Appeal Brief Request for Review of May 29, 2007, Helmly does not disclose or suggest a combination of steps, including “calculating a modified target payload weight based on an analysis of previous payload weight” as required in independent claims 1, 17, and 33. The Office Action of November 21, 2008 concedes that Helmly does not “teach calculating a modified target payload weight based on the analysis.” (Office Action at pages 2-3). To make up for the shortcoming, the Office Action asserts that it would have been obvious to use the data for analyzing and modifying the payloads as Helmly teaches because Helmly’s system is being used “to comply with government regulations and if a load is above legal limits the company would be in danger of legal action taken against it.” (Office Action at pages 2-3).

However, this proposed modification to Helmly would render Helmly unsatisfactory for its intended purpose, which is “to assure compliance with state highway laws and regulations.” (Col. 2, ll. 65-66). *See, MPEP 2143.01(V)*. To determine whether equipment complies with a predetermined legal limit, a legal weight determining module compares “the truck’s length, number of axles, and outside tires” with the “preloaded data records and/or

tables based upon the Department of Transportation regulations and determines and selects the appropriate maximum allowable weight (legal limit) from the data table.” (Helmly, col. 7, l. 66 to col. 8, l. 4, emphasis added).

The “target payload” in Helmly is the “legal limit.” If the actual weight of the load is over the target, the target is not modified, but is necessarily a constant data value because it is based on a predetermined limit provided by the regulations. In this case, if the actual weight is greater than the legal limit, “a print error indicator 170 actuates the printer to indicate an error message requiring the driver to dump his excess load.” (Helmly, col. 8, ll. 22-28). Thus, Helmly does not teach or disclose calculating a modified target payload weight based on an analysis of previous payload weight, as required by claim 1, because complying with a government regulation is a fundamentally and functionally different intended purpose from complying with operating and maintenance standards as taught in the above referenced application. (See, Background at page 1).

Moreover, to attribute the improvements taught in the above application to the cited references would constitute improper hindsight reasoning based on the Applicant’s disclosure. Helmly discloses a method that indicates compliance with a “legal limit” for a piece of equipment. For example, in Helmly, a legal weight determining module 160 determines and selects the appropriate maximum allowable weight (legal limit) from a data table derived from preloaded data records and/or tables based upon Department of Transportation regulations (col. 7, l. 66 to col. 8, l. 4). Thus, the table of data elements that the legal limit is based on is merely a collection of nonfunctional descriptive data. In other words, the table is a compilation or arrangement of regulations.

In contrast, calculating a modified target payload weight based on analysis of previous payload weight, as required by claim 1, creates a functional data structure that imparts functionality when employed by the disclosed processor and enhances the implemented method to enable balancing the divergent interests of (1) hauling payload at maximum operating weights to increase profit for the operation while (2) maximizing equipment life. *See, Specification at page 1*. One of ordinary skill would not modify the legal weight determining module 160 of Helmly to calculate the modified target payload based on analysis of previous payload weight as disclosed in this application because it would

not be profitable to operate equipment in Helmly at a weight above the predetermined legal limit. In fact, to one of ordinary skill the opposite is probably true: equipment in Helmly is operated more profitably when operated under the legal limit to avoid fees or punitive measures resulting from operating equipment when the legal limit is exceeded.

Claims 2-13 and 15-16 depend from claim 1, claims 18-29, and 31-32 depend from claim 17, and claims 34-37 depend from claim 33, and as such, are construed to incorporate all of the elements of the claims to which they refer. *See 35 U.S.C. § 112, fourth paragraph.* Thus, claims 2 –13, 15-16, 17-29, and 31-37 must read as including the elements discussed above. Thus, the same arguments apply as set forth above with respect to claims 1, 12 and 17. Independent claims 40 and 41 although different in scope, recite similar features. Therefore, these claims are also allowable for at least the same reasons as cited above.

Claim 3 has been amended to include the element “wherein the target payload is determined based on at least one of the following features: slope of terrain or type of terrain.” Neither Helmly nor Schlessinger, singularly nor in combination, teach, suggest, or disclose determining the target payload based on the slope or the type of terrain. Therefore, in addition to the reasons for allowance cited above, claim 3 is independently allowable.

Claim 38 recites “a method for reviewing a request for warranty service on a piece of equipment subject to a payload standard, the method comprising: receiving payload weight data associated with the piece of equipment; analyzing the payload weight data for compliance with the payload standard; and responding to the request for warranty service based on the analysis.” As argued in the Pre-Appeal Brief Request for Review, Helmly is silent regarding warranty service on a piece of equipment subject to a payload standard. To make up for this shortcoming in the art, the Office Action asserts that “it would have been obvious to one of ordinary skill in the art to obtain payload compliance data to check for compliance as overloading a vehicle could void the warranty.”

Applicant respectfully requests that the Examiner clarify how Helmly can be modified to achieve the claimed invention. Neither Helmly nor Schlessinger, singularly or in combination, teach, suggest, or disclose “responding to the request for warranty service based on the analysis.” Accordingly, for at least these reasons, Applicant respectfully requests withdrawal of the rejection of claim 38 under 35 U.S.C. § 103(a). Claim 39 depends from

independent claim 38 and is therefore allowable for at least the same reasons.

Conclusion

Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections, and that they be withdrawn. The Examiner is courteously invited to telephone the undersigned representative if it is believed that an interview might be useful for any reason.

Applicant respectfully requests a two (2) month extension of time under 37 CFR § 1.136 and that the processing fee set forth in 37 § CFR 1.17 and any other applicable fees be withdrawn from Deposit Account No. 03-1129.

Respectfully submitted,

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